

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On November 9, 2016 appellant, then a 47-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 2016 he unexpectedly twisted his back while holding a roller board suitcase at shoulder level while in the performance of duty. He stopped work on November 8, 2016 and received continuation of pay (COP). On December 1, 2016 OWCP accepted appellant's claim for lower back (lumbar) strain. Appellant received COP through December 23, 2016, and OWCP paid wage-loss compensation for temporary total disability beginning December 24, 2016.<sup>2</sup>

Appellant received medical treatment from Dr. Edward K. Kahn, a Board-certified orthopedic surgeon. In an April 11, 2017 report, Dr. Kahn indicated that appellant was being evaluated for complaints of back pain following a work-related injury. He diagnosed lumbar strain. Dr. Kahn reported that appellant's subjective complaints far outweighed any objective findings and opined that there was a "significant amount of symptom magnification going on."

OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the record, to Dr. Michael A. MacKay, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of his work-related November 7, 2016 employment injury and work capacity. In a May 11, 2017 report, Dr. MacKay reviewed appellant's history of injury and noted that appellant's claim was accepted for lumbar sprain. Upon physical examination of the lumbar spine, he observed mild tightness in the hamstrings with increased lower back pain on straight leg raise bilaterally and tenderness in the midline, paraspinal lumbosacral, and sacroiliac (SI) regions. Dr. MacKay opined that appellant still suffered residuals of his lumbar sprain injury. He recommended that appellant begin a work hardening program to expedite his return to work.

On December 21, 2017 OWCP referred appellant along with a statement of accepted facts (SOAF) and a copy of the record and a series of questions to Dr. Nicholas A. Grimaldi, a Board-certified orthopedic surgeon, for another second-opinion evaluation regarding the status of his work-related November 7, 2016 employment injury and work capacity. In a January 29, 2018 report, Dr. Grimaldi reviewed the SOAF and the medical evidence of record. He described the November 7, 2016 employment incident and noted that appellant's claim was accepted for lumbar sprain. Upon examination of appellant's lumbar spine, Dr. Grimaldi observed exquisite tenderness upon palpation of the low back. He related that appellant was very guarded upon palpation and that he cried out in pain. Dr. Grimaldi reported range of motion of 65 degrees forward flexion and 20 degrees back extension. He related that straight leg raise testing elicited pain in appellant's back. Dr. Grimaldi opined that appellant had "symptom magnification appreciated by his exquisite tenderness to palpation to his lumbar facet joints." He noted that appellant had negative Faber's test over the sacroiliac joint, negative Gaenslen's test, and his magnetic resonance imaging (MRI) scan findings were negative for any significant type of operative pathology.

In response to OWCP's questions, Dr. Grimaldi reported that there were no physical examination findings to support that appellant continued to have a lumbar sprain and opined that he had symptom magnification with demonstrated weakness to his bilateral legs. He explained

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<sup>2</sup> Effective June 25, 2017, OWCP placed appellant on the periodic compensation rolls.

that strains of the lumbar region typically resolve within two to three months of conservative care. Dr. Grimaldi reported that appellant should be able to return to work without any restrictions, but recommended that appellant undergo a functional capacity evaluation (FCE) to determine his work capability because he was at a high risk of malingering.

In a February 27, 2018 report, Dr. Samuel A. Yoakum, Board-certified in physical medicine and rehabilitation, treated appellant for complaints of sacroiliac (SI) joint pain. Upon examination of appellant's lumbar spine, he observed decreased extension and rotation to the right due to right upper buttock pain. Gaenslen's and SI joint compression tests were significantly positive on the right. Dr. Yoakum diagnosed SI joint pain and thoracolumbar scoliosis and completed a work status note indicating that appellant could work limited duty.

On March 26, 2018 appellant underwent a functional capacity evaluation (FCE), which he was unable to complete due to elevated blood pressure.

In a March 30, 2018 work capacity evaluation form (Form OWCP-5c), Dr. Grimaldi indicated that appellant was capable of performing his usual job without restriction. He further noted that appellant needed to see his primary care physician for blood pressure control. Dr. Grimaldi additionally commented that appellant knew he needed to take his blood pressure medicine prior to the FCE and he did not. He also indicated that appellant did not even take any medication for pain. Lastly, Dr. Grimaldi commented that appellant would be placed on regular duty until his blood pressure was under control and he could retake the FCE.

In a May 30, 2018 supplemental report, Dr. Grimaldi opined that appellant's accepted work-related lumbar sprain had resolved based on clinical objective findings. He noted that both, he and Dr. Kahn, reported findings of symptom magnification. Dr. Grimaldi explained that the findings of symptom magnification through light palpation demonstrated that appellant's symptoms were not from a lumbar sprain, and that his symptoms were potentially nonorganic. He further commented that appellant had undergone conservative treatment, as well as injections, and explained that lumbar sprains typically resolve within two to three months with rest and conservative care. In conclusion, Dr. Grimaldi stated that appellant's "continued symptoms [were] not due to a lumbar sprain [and were] potentially due to nonorganic causes based on clinical objective findings."

On July 26, 2018 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because his November 7, 2016 employment injury had resolved. It found that the weight of medical evidence rested with the January 29 and May 30, 2018 reports of Dr. Grimaldi, who found that appellant's lumbar sprain had resolved and that he was no longer disabled from work. OWCP afforded appellant 30 days to submit additional evidence or argument, in writing, if he disagreed with the proposed termination.

On September 4, 2018 OWCP received appellant's response to its proposed termination. Appellant noted his disagreement with Dr. Grimaldi's medical opinion and indicated that another physician had agreed with Dr. Yoakum's findings of nerve inflammation and damage in the right facet joint. He related that he had spoken with an OWCP nurse about changing his diagnosis from lumbar spine strain to facet joint injury. Appellant asserted that he was not magnifying his symptoms and simply wanted his back pain fixed.

OWCP also received an April 27, 2017 work status note from a physician with an illegible signature.

By decision dated January 18, 2019, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective January 19, 2019. It found that the weight of medical evidence rested with Dr. Grimaldi, OWCP's second-opinion examiner, who concluded in reports dated January 29 and May 30, 2018, that appellant had no further residuals or disability due to his accepted November 7, 2016 employment injury.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.<sup>3</sup> It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 19, 2019.

OWCP improperly terminated appellant's wage-loss compensation based on Dr. Grimaldi's second-opinion reports as he did not provide sufficient medical reasoning in his January 29 and May 30, 2018 reports to establish that appellant's accepted lumbar sprain had resolved and that appellant was able to return to work. Dr. Grimaldi opined that there were no physical examination findings to support that appellant still had residuals of his accepted lumbar sprain. He explained that appellant had "symptom magnification" and indicated that strains typically resolve within two to three months with rest and conservative care.

In his January 29, 2018 report, Dr. Grimaldi recommended that appellant undergo an FCE to determine work capacity. On March 26, 2018 appellant was unable to complete an FCE due to elevated blood pressure. Instead of referring appellant for another FCE, however, OWCP terminated appellant's wage-loss compensation and medical benefits based on Dr. Grimaldi's medical opinion. The Board has found that, once OWCP undertakes development of the medical

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<sup>3</sup> A.G., Docket No. 18-0749 (issued November 7, 2018); S.F., 59 ECAB 642 (2008); Kelly Y. Simpson, 57 ECAB 197 (2005); Paul L. Stewart, 54 ECAB 824 (2003).

<sup>4</sup> A.G., *id.*; see I.J., 59 ECAB 408 (2008); Elsie L. Price, 54 ECAB 734 (2003).

<sup>5</sup> R.R., Docket No. 19-0173 (issued May 2, 2019); Del K. Rykert, 40 ECAB 284 (1988).

<sup>6</sup> L.W., Docket No. 18-1372 (issued February 27, 2019); Kathryn E. Demarsh, 56 ECAB 677 (2005).

<sup>7</sup> R.P., Docket No. 17-1133 (issued January 18, 2018); A.P., Docket No. 08-1822 (issued August 5, 2009).

evidence, it has the responsibility to do so in a manner that would resolve the relevant issues in the case.<sup>8</sup> As such, OWCP should have obtained a supplemental report from Dr. Grimaldi after appellant successfully completed an FCE and Dr. Grimaldi had an opportunity to review the results and provide an opinion regarding appellant's ability to return to work.<sup>9</sup>

### **CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 19, 2019.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 18, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 9, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> See *R.B.*, Docket No. 14-1043 (issued December 12, 2014); *V.H.*, Docket No. 14-0433 (issued July 3, 2014).

<sup>9</sup> See *W.J.*, Docket No. 18-1376 (issued March 29, 2017) (where the Board found that OWCP failed to complete the development of the medical record as recommended by a second-opinion examiner who requested updated diagnostic testing in order to assess whether appellant's employment injury and disability had resolved).